

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

CHAMBERS OF
J. FREDERICK MOTZ
UNITED STATES DISTRICT JUDGE

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November 13, 2008

MEMO TO COUNSEL RE: Howard Kastin v. Koko's Confectionary & Novelty, et al.
Civil No. JFM-08-690

Dear Counsel:

I have reviewed the memoranda submitted in connection with defendant's motion for summary judgment. The motion is granted.

My schedule does not permit me to write an extensive opinion. Instead, I will briefly summarize the reasons for my ruling in this letter. Please be assured, however, that I have carefully considered all of the arguments you have made.

The reasons for my ruling follow.

First, the age-related statements upon which plaintiff relies are of no moment when viewed in the overall context of the case. The fact that Steven and Brian Kovens may have said such things as "Hi, pops," "Hey, old man" or "Grandpa" as a greeting when they passed in the halls with plaintiff is of no moment. These greetings were mere "friendly banter," particularly because plaintiff liked telling people he was a grandpa, and they give rise to no inference of age discrimination. *See, e.g., Collier v. Service American Corp.*, 934 F. Supp. 168 (D. Md. 1996). As for the comments made by Steven Kovens while he and plaintiff were attending a trade show in Germany, plaintiff himself prompted those comments by saying something like "Slow down, I can't keep up with you young folks, you know, this body doesn't work like yours any more." Again, Kovens' response, "Come on old man or come on gramps, we only have an hour, let's hurry up" provides no basis for a reasonable inference of age discrimination.

Second, plaintiff was 69 years of age when he was hired by defendant. This itself negates any reasonable inference of age discrimination in the treatment of plaintiff by defendant.

Third, the fact that the same person (Steven Kovens) hired and discharged plaintiff within a relatively short period of time gives rise to a strong inference of non-discrimination. *See Proud v. Stone*, 945 F.2d 796, 797 (4th Cir. 1991).

Fourth, within the recent past four persons over the age of 70 retired from defendant's

work force and another person over 70 passed away while working for defendant. Presently working for defendant are two persons over the age of 70.

Fifth, the record clearly establishes that defendant had legitimate, non-pretextual reasons for discharging plaintiff. He introduced only two products during the six months he was employed by defendant. (Before he was hired defendant introduced 20 new products per year, and plaintiff's successor has introduced 30-40 new products in one and a half years). Further, the record demonstrates that one of the reasons that plaintiff was unproductive is that he wanted to reorient defendant's business from a "novelty business" to a "basic staple business." Of course, the nature and direction of defendant's business was for its management, not plaintiff to decide.

Finally, during the course of his employment plaintiff proved that he lacked proficiency in using Excel despite the fact that in his cover letter submitting his resume to defendant, he wrote: "Skills: excel:, medium 10+ years."

A separate order granting defendant's summary judgment motion is being entered herewith.

Very truly yours,

/s/

J. Frederick Motz
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

HOWARD KASTIN

v.

KOKO'S CONFECTIONARY &
NOVELTY, ET AL.

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* Civil No. JFM-08-690

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ORDER

For the reasons stated in the accompanying memorandum, it is, this 13th day of
November 2008

ORDERED

1. Defendant's motion for summary judgment is granted; and
2. Judgment is entered in favor of defendant against plaintiff.

/s/_____
J. Frederick Motz
United States District Judge